

A caterer's charges for wait staff, equipment rental, linen and delivery are includable in his gross receipts and are fully taxable. These are simply costs of doing business, which are never deductible from gross receipts. (This is a GIL)(See 86 Ill. Adm. Code 130.410).

August 25, 2000

Dear Xxxxx:

This letter is in response to your letter received on July 17, 2000. The nature of your letter and the information you have requested require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 (b) and (c), which can be accessed at the Department's website at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter you have stated and made inquiry as follows:

We are requesting a letter from the Illinois Department of Revenue to the COMPANY, stating that we are correct in charging sales tax on delivery fees and the reasons why we need to charge them. Some of our clients have protested the sales tax charge on their delivery fee. We do not bill delivery fees as a separate contract, they are charged with each individual order as a separate line item and the customer has the option of picking up the order.

The Retailers' Occupation Tax is imposed upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption. The tax is measured by the seller's gross receipts from such sales made in the course of business.

Persons engaged in the business of selling meals to purchasers for use or consumption incur Retailers' Occupation Tax liability on their gross receipts from such sales. See the enclosed copy of 86 Ill. Adm. Code 130.2145. Such persons specifically include caterers.

Section 1 of the Retailers' Occupation Tax defines the term, "selling price," which is the base of the tax. It states that "selling price" includes "the consideration for a sale valued in money ... and shall be determined without any deduction on account of the cost of the property sold, the cost of materials used, labor or service cost or any other expense whatsoever" See, 35 ILCS 120/1. As indicated by this definition, a retailer's costs of doing business are not deductible from his gross receipts. This principle is articulated in Section 130.410 of the Department's regulations governing "Costs of Doing Business Not Deductible" (see enclosed copy). The regulation specifically states that in calculating Retailers' Occupation Tax liability, "freight or transportation costs ... or any other expenses whatsoever" are not deductible from gross receipts.

As a result, charges for wait staff, equipment rental, linen and delivery are includable in a caterer's gross receipts and are fully taxable. These are simply costs of doing business, which are never deductible from gross receipts. It is immaterial that the customer is separately billed for the price of these items. Again, they are simply costs of doing business as a caterer, just as they would be part of the overhead expenses incurred by a restaurant owner.

August 25, 2000

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 78-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110 (b).

Very truly yours,

Jerilynn Gorden
Senior Counsel, Sales & Excise Taxes

Enc.